

Exhibit E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: VALSARTAN PRODUCTS LIABILITY LITIGATION	CIVIL ACTION NUMBER: 1:19-md-02875-RBK-JS STATUS CONFERENCE (Via telephone)
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Wednesday, October 14, 2020
Commencing at 4:05 p.m.

B E F O R E: THE HONORABLE JOEL SCHNEIDER,
UNITED STATES MAGISTRATE JUDGE

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23 A L S O P R E S E N T :

24 Judge Magistrate Williams

25

1 to on my copy, is that --

2 MS. LOCKARD: I think that's a formatting issue.

3 THE COURT: Okay.

4 MS. LOCKARD: Because I think plaintiffs limited it
5 to hypertension or cancer.

6 THE COURT: Okay. So there's no dispute about
7 potentially Roman Numeral IV A, is there?

8 MS. LOCKARD: The dispute is plaintiffs wanted to
9 limit this. They added hypertension or cancer and deleted any
10 reason. Our proposal --

11 THE COURT: Oh, I see, I see, I see.

12 MS. LOCKARD: We want a full list of medical
13 providers for the past ten years and plaintiff wanted only to
14 provide medical providers who treated for the hypertension and
15 the cancer. And again, we feel that, you know, we don't know
16 what's in the history for these patients, what they may have
17 told their medical providers. We're entitled to get those
18 medical records. I don't know how we get the medical records
19 if we don't know who to ask them from. It all goes to their
20 quality of life. They're --

21 THE COURT: Let me give you a hypothetical that comes
22 up not infrequently. An OB/GYN doctor, plaintiff says, that
23 has no relevance to the case, I have a privacy interest in
24 those records, I have lung cancer or liver cancer, it has
25 nothing to do with my OB/GYN treatment. Why should I have to

1 going on here, Your Honor. This is Seth Goldberg. You know,
2 there is a dispute as to whether the request that we're now
3 seeking are duplicative. That's been the only objection
4 asserted to the requests. We don't think they are and we had
5 a meet and confer with plaintiffs and, you know, after hearing
6 their position that they are duplicative, we identified the
7 specific documents that we think are not duplicative. They
8 are in our insert on Page 2 of our submission.

9 And I think one point -- and there are a few points I
10 would like to cover on this issue on the duplicative point, we
11 don't think they are duplicative. The wording in the
12 plaintiff fact sheets is not written to cover any of these
13 kinds of documents that are on Page 2 of our submission, in
14 particular, are the insurance and deductible information.

15 But if they are duplicative, you know, plaintiffs
16 should have to certify that they searched for and collected
17 these kind of documents that are in their possession, and what
18 they have very clearly said in their paper is that they didn't
19 do that and they shouldn't have to do that now.

20 And, you know, of course, defendants have been
21 required to produce not only core discovery throughout 2019
22 before even getting to document requests, but then total, 140
23 document requests, about 70 to 80 just on the manufacturer
24 defendants.

25 So we don't read the plaintiff fact sheet as being

1 the limit on defendants' discovery of the economic class
2 representatives, both the consumers and the TPPs. We read it
3 as a source of information that is central to a specific
4 plaintiffs' claim, and -- but not the information, not the
5 information that's core to their class certification
6 allegations.

7 And the information we're seeking now with the Rule
8 34 requests are truly essential to the questions about
9 ascertainability and their damages calculation, and this kind
10 of information is not covered in the plaintiff fact sheets,
11 it's information that we need to be able to understand their
12 theory and to be able to defend or oppose their motion for
13 class certification. And, you know, in essence, they're
14 claiming that they should be reimbursed a hundred percent of
15 any payment made for any of defendants' ECDs even if they
16 weren't contaminated, and what we're trying to do is to obtain
17 the information that is in their possession that shows all of
18 the variations from consumer to consumer, not just these class
19 reps, but remember, they represent thousands and thousands of
20 alleged consumers of these drugs, and all of these consumers
21 who are paying co-pays, who have insurance, all of their
22 payments are subject to pharmacy benefit plans, formularies,
23 drug -- out-of-pocket caps, pricing tiers, preferred pharmacy
24 options, preferred delivery options, each of which changes the
25 price that any one plaintiff or any one consumer would pay for

1 because that is most likely to get the most comprehensive
2 medical history, and with all these questions, it's very
3 unlikely you're not going to get to the bottom of any
4 plaintiff's medical history.

5 MS. LOCKARD: Can we include a question in this that
6 asks, are you using your gynecologist as your family doctor,
7 so that we can sort out those individuals who may be doing
8 that?

9 THE COURT: Or why don't you say, who do you use as
10 your family doctor.

11 MS. LOCKARD: Or primary care.

12 THE COURT: That's fine.

13 MR. SLATER: I was just going to say --

14 THE COURT: That's fine.

15 MR. SLATER: I was going to say family doctor slash
16 primary care provider.

17 THE COURT: Perfectly appropriate. I think that's
18 perfectly appropriate.

19 MR. SLATER: So we've never objected to the primary
20 care provider, because obviously for the reasons you've
21 stated.

22 THE COURT: Right.

23 MS. LOCKARD: And who do you use for that.

24 And certainly, you know, if it's an instance where
25 the allegation is, you know, that the OB/GYN was the

1 diagnosing physician or treating physician --

2 THE COURT: You'll get it.

3 MS. LOCKARD: -- for breast cancer or --

4 THE COURT: You'll get it. No question about it.

5 MR. SLATER: There's no objection to that. The
6 diagnosing doctors, the treating doctors are all -- we've not
7 objected to that.

8 MS. LOCKARD: Okay. So if the OB/GYN is the treating
9 or the diagnosing physician, then we're entitled to get that
10 information.

11 MR. SLATER: Yeah, we've already said the diagnosing
12 or treaters for cancer.

13 THE COURT: For the cancer.

14 MR. SLATER: Right.

15 THE COURT: Yes, I'll -- yes.

16 MR. SLATER: Is the next section the medical
17 background section?

18 THE COURT: There's a lot of red on these pages.

19 MS. LOCKARD: So I think --

20 MR. SLATER: Red means correct.

21 (Laughter.)

22 MS. LOCKARD: The first dispute relates to the
23 tobacco use and we think we should be entitled to get into
24 their history of tobacco use at any time. Plaintiffs wanted
25 to limit this to a number of years, within 10 or 15 years of

1 THE COURT: Time out, Mr. Goldberg, time out.

2 The Court's ruling is that the defendants have a
3 right to serve Rule 34 document requests. The Court does not
4 recall it being envisioned that the fact sheets would be
5 exhaustive with regard to all of the information the
6 defendants needed for class certification purposes.

7 So the real issue is whether the requests are
8 appropriate, extensive, et cetera, et cetera, the propriety of
9 each of the document requests. That's the real issue, not
10 whether defendants have a right to serve them or not, okay?

11 So I didn't mean to cut you off, Mr. Goldberg, but I
12 knew how I was going to rule on that issue and I didn't want
13 to belabor the point.

14 So now the issue becomes, how are we going to deal
15 with this issue.

16 I am not prepared during this call to go through each
17 request one by one to make a ruling, nor do I know if the
18 parties have exhausted their efforts to try and reach an
19 agreement, or are they at an impasse on what needs to be
20 produced.

21 Plaintiff, what's your position on that?

22 MR. RIVERO: Judge, may I be heard for a moment?
23 This is Andrés Rivero. I represent MSP, Judge, and I was
24 trying to make a comment. I know the Court has ruled, but if
25 I may, and I think it does relate to the general question.